

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE
CONTEMPT PETITION NO. 164 OF 1997

Abdul Razak Bane Miyan .. Petitioner

Vs.

Ashafaque and Ors. Ahmed Mahommed Saseed
.. Respondents

Ms. N.D. Buch for the Petitioner.

Mr. A.R. Shaikh for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : October 05, 2005.

ORAL JUDGMENT:

1. The petitioner was in the employment of the respondents - owners of the power looms and he was allegedly terminated from service on or about 5/10/1984. He approached the Labour Court by filing Complaint (ULP) No.55 of 1984 which came to be dismissed on 13/1/1989. He, therefore, approached the Industrial Court in Revision Application (ULP) No.39 of 1989 and this revision application also was dismissed on 18/8/1989. The orders passed by both the courts below came to be challenged before this Court in Writ Petition No.2578 of 1990. However, during the pendency of this petition, it appears that the petitioner approached the Labour Court by filing a

Criminal Complaint under Section 48 of the M.R.T.U and P.U.L.P. Act 1971 and it was registered as Misc. Application No.179 of 1989. He had alleged that the directions given by the Industrial Court in para 7 of its Judgment dismissing the revision application were not implemented and, therefore, the petitioner sought the prosecution of the Proprietors/Owners. When the employers received the notice in the Criminal Complaint, they approached this court in Writ Petition No.4632 of 1989. This petition was dismissed in default by this court on 25/10/1991 and when Writ Petition No.2578 of 1990 came up before this court on 13/8/1995 it was disposed as infructuous. The petitioner now contends that consequent to the observations made by the learned Member of the Industrial Court in para 7 of his Judgment dated 18/8/1989 an Advocate's notice was issued on 11/12/1996 calling upon the respondents to reinstate the petitioner and inspite of this approach the respondents did not take any steps to comply with the directions issued by the Industrial Court.

2. The respondents have filed an affidavit in reply and denied that they are guilty of contempt

within the meaning of Section 2(b) of the Contempt of Courts Act, 1971. As per the respondents the order dated 18/8/1989 passed by the Industrial Court did not give any directions to them to reinstate the petitioner and the observations made in para 7 of the said Judgment cannot be read as directions. They prayed for dismissal of the Contempt Petition.

3. The observations made by the Industrial Court in para 7 of its Judgment dated 18/8/1989 read as under:-

" I may further mention that it is not the contention of the Respondents that the Complainant has been terminated from service. The defence is that he has absented himself from duties w.e. from 13.10.1984. It is, therefore, necessary for the Respondent to allow the Complainant to join duties from the time he is intending to do within 15 days."

3A. There is no dispute that the revision filed by the petitioner was dismissed by the Industrial Court vide its Judgment dated 18/8/1989 and by the operative

part of the order there was no direction to reinstate the petitioner and obviously it is not possible unless the order of termination was held to be illegal or the court had directed reinstatement by setting aside the order of termination. The observations made by the Industrial Court in para 7 of its Judgment, as quoted hereinabove, cannot be termed as directions and/or an order to reinstate the petitioner. If the petitioner had approached the employers stating that he was willing to continue to work with them, they were required to consider such an application and obviously subject to other factors like availability of vacancy, declaration of the petitioner to work on the same benefits as he was getting and so on and so forth.

4. The learned counsel for the petitioner has referred to a Division Bench decision of this Court in the case of Chandrakant Ganpat Shelar & Ors. vs. Sophy Keely and ors. reported in **1987 II CLR 312** in support of her contentions that the order passed by the Industrial Court on 18/8/1989 stood confirmed by this Court when Writ Petition No.4632 of 1989 was dismissed in default on 24/10/1991 and more so because

in the said petition one of the prayers was to set aside the observations made in para 7 of the order impugned. This proposition would have to be considered if the petition was dismissed on merits. The petition filed by the respondents came to be dismissed in default and, therefore, the doctrine of merger would not be applicable in such a case. Even otherwise, the Writ Petition was dismissed on 24/10/1991 and the first approach to the employers through the Advocate's notice is of 11/12/1996 i.e. almost after five years. Cognizance of contempt could be taken within a period of one year from the cause of action under Section 20 of the Contempt of Courts Act and if the Contempt Petition is not moved within one year, obviously, Section 20 would bar such petition.

5. Thirdly, when the petition himself had gone to the Labour Court and filed a Criminal Complaint against the employers alleging that they did not implement the very same order passed by the Industrial Court, it was not permissible for him to invoke the powers of this court under the Contempt of Courts Act, 1971, more so when Criminal Complaint filed by him was dismissed in default by the Labour Court on 21/3/1992

as has been pointed out in the affidavit in reply
filed by the respondents.

6. Thus, this Contempt Petition fails on all
counts and the same is hereby dismissed. Rule is
discharged.

(B.H. Marlapalle,J.)